UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

In re ALONZIA HARRIS,	)	
	)	
Debtor.	)	
	)	
ALONZIA HARRIS,	)	
	)	
Appellant,	)	
	)	
V.	)	Case No. 00-cv-4014-JPG
	)	
ISRAELITE BIBLE CLASS, INC.; EDWARD BRUCE; PAUL HENRY; MARK HUNTER, RICHARD KRUGER, PATRICK DUFFY; RUSSELL DAKIN,	)	BK No. 99-41769
	)	
Appellees.	)	
	)	
In re CHARLES and BEVERLY DAVIS,	)	
	)	
Debtor.	)	
	)	
CHARLES and BEVERLY DAVIS,	)	
	)	
Appellants,	)	
	)	Case No. 00-cv-4015-JPG
V.	)	
	)	BK. No. 99-41770
ISRAELITE BIBLE CLASS, INC.; EDWARD BRUCE; PAUL HENRY; MARK HUNTER; RICHARD KRUGER; PATRICK DUFFY; RUSSELL DAKIN,	)	
	)	
Appellees.	)	

MEMORANDUM AND ORDER

Two bankruptcy appeals are currently pending before the Court. They involve common questions of law and fact. In fact, the same attorney, Larry L. Beard ("Beard"), represents both parties and has

submitted nearly identical briefs in each case, both of which appeal a single joint sanctions order by the bankruptcy court. However, defense counsel filed only *one copy of* the bankruptcy proceeding transcripts when he appealed both cases. Since the two appeals are distinct, the transcripts could only fall into one court file, leaving the other file incomplete for judicial review. What defense counsel should have done, though it would have required purchasing two copies of each transcript, was to file *two* separate sets of transcripts, one with each appeal.

To avoid delay associated with ordering Beard to properly prepare his cases for appeal and to conserve judicial resources, the Court will consolidate the two appeals. "Although neither party requested consolidation, courts are routinely granted authority to consolidate related matters." *In re Cannonsburg Envir. Assoc., Ltd*, 72 F. 3d 1260, 1269 (6th Cir. 1996) (holding that district court was within its discretion in consolidating *sua sponte* appeals from bankruptcy court's order where the issues on appeal were essentially the same); *see* Fed. R. Bankr. P. 8018 (providing that "the district court or the bankruptcy appellate panel may regulate its practice in any manner not inconsistent with these rules"); *see* Fed. R. Civ. P. 42 (giving courts broad authority to consolidate actions "involving a common question of law or fact ... pending before the court" and to "make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay"). While this Court does not approve of defense counsel's "save-a-buck" strategy of filing one set of transcripts for two appeals, it nonetheless believes that consolidation is appropriate for two reasons: (1) to have a complete record in both appeals, and (2) to avoid unnecessary delay that would result from requiring defense counsel to produce and file a transcript in both cases.

Therefore, the Court hereby **ORDERS** that case number 00-cv-40l4-JPG and case number 00-cv-4015-JPG be **CONSOLIDATED**. All future filings shall bear the foregoing caption reflecting the consolidation.

I. The Appeals

Debtors Alonzia Harris,[1] Charles Davis and Beverly Davis (collectively, "the Debtors") appeal decisions to impose sanctions by Judge Kenneth J. Meyers of the United States Bankruptcy Court for the Southern District of Illinois in the Debtors' Chapter 7 bankruptcy cases numbered 99-41769 (the Harris case) and 99-41770 ("the Davis case"). Judge Meyers jointly sanctioned the Debtors and Beard, also the Debtors' attorney in the bankruptcy proceedings, for filing frivolous documents in the bankruptcy court. He imposed sanctions orally at a hearing then followed up by entering an identical written order in each case holding the Debtors and Beard jointly and severally liable for the sanctions amount.[2] The bankruptcy court's sanctions orders were entered in cases or proceedings referred to the bankruptcy judge under 28 U.S. C. § 157. Thus, this Court has jurisdiction to hear this appeal under 28 U.S.C. § 158(a)(1). The fact that the bankruptcy case closed prior to the sanctions orders did not deprive the bankruptcy court of jurisdiction to enter the sanctions orders and does not deprive this Court of jurisdiction to review the decision to impose sanctions. *See Cooler & Gell v. Hartmarx Corp.*, 496 U.S. 384, 394-96 (1990) (post-dismissal Rule 11 sanctions).

The Court has reviewed the record on appeal, the briefs of the Debtors (doc. #3[3]) and the briefs of appellees Israelite Bible Class, Inc., Edward Bruce, Paul Henry, Mark Hunter and Richard Kruger (collectively, the "Appellees") (doc. #5). Because the relevant facts and legal arguments of this case are

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[1]Several of the documents in the Harris file refer to *Alonzo* Harris. The Court assumes that this is the same person as appellant Alonzia Harris.

[2]Because the written sanctions orders are identical and impose sanctions jointly and severally, the Court will hereinafter refer to the two written orders as a single order.

[3]Unless otherwise noted, citations apply to both files or records on appeal.

well-presented in the parties' briefs, the Court finds that oral argument is unnecessary pursuant to Bankruptcy Rule 8012.

II. Standard of Review

In a bankruptcy appeal, the bankruptcy court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses." Fed. R. Bankr. P. 8013; *see In re Krueger*, 192 F.3d 733, 737 (7th Cir. 1999). A finding is clearly erroneous when the reviewing court, having considered the entire body of evidence, is left with the definite and firm conviction that a mistake has been committed. *Shaw v. Prentice Hall Comp. Pub., Inc.*, 151 F.3d 640, 642 (7th Cir. 1998). Where questions of law are concerned, however, the district court will review the bankruptcy court's ruling *de novo*. *In re Krueger*, 192 F. 3d at 737. The district court may affirm, modify or reverse a bankruptcy judge's judgment, order or decree or it may remand with instructions for further proceedings. Fed. R. Bankr. P. 8013.

The Court reviews a decision to impose sanctions for abuse of discretion and, unless the sanctioning court acted contrary to the law or reached an unreasonable result, this Court will affirm the sanctions decision. *In re Rimsal, Ltd*, 212 F.3d 1039, 1047 (7th Cir. 2000); *In re Generes*, 69 F. 3d 821, 826 (7th Cir. 1995), *cert. denied*, 519 U.S. 823 (1996).

III. History[4]

[4]Many of the "facts" set forth below, which are recited to provide background for this decision, are based in large part on the parties' briefs, have no evidentiary basis in the record on appeal and therefore may not be completely accurate. This does not change the Court's resolution of this case because that resolution turns on the record that has been provided and on questions of law.

The parties represent that on September 21, 1999, the Debtors were evicted from their homes[5] by the sheriff of Pulaski County. Two days later, on September 23, the Debtors filed petitions for bankruptcy under Chapter 7. They claim that they were required to make such a filing "as an emergency action to save [their] home[s], and as protection against an outstanding claim against [them]." Appellants' Br. at 4. The claim to which the Debtors refer appears to be a December 3, 1998, judgment against them by an Illinois state court for ejectment from their homes. The Debtors allege that the next day, September 24, the sheriff, apparently finding the Debtors back in their homes, "visited [the Debtors'] homes and asked [them] to leave. [The Debtors were] informed that [they] would be arrested if [they] did not leave. [The Debtors were] removed from [their] home[s] at this time. . . ." Appellants' Br. at 5.

On September 28, the Debtors verified and, through Beard, filed complaints for temporary restraining orders and temporary injunctions to prevent them from being evicted from or locked out of their homes. The Debtors also verified and, through Beard, filed motions for sanctions requesting that the Appellees be sanctioned for their role in removing the Debtors on September 23 and 24 from their homes after they filed their bankruptcy petitions. A joint hearing on the motions was set for October 5.

In the October 5 hearing, Beard admitted that the Debtors were evicted from their homes two days prior to filing their bankruptcy petitions, 10/5/99 Tr. at 3,[6] and that numerous state court orders have found that the Debtors have no property interest in the real estate in question and were trespassing on it, 10/5/99

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[5]The Court will call the premises at issue the Debtors' "homes" although it appears from the file that who actually has a right to be on the premises is, and has been for quite a while, a hotly contested issue.

[6]A copy of the transcript of the October 5 hearing is attached as an exhibit to the Appellees' motion for sanctions (b. doc. # 24 in Harris case; b. doc. # 25 in Davis case). Consistent with the Debtors' "save-a-buck" strategy, an official copy of the transcript has not been provided.

Tr. at 6. Judge Meyers denied the Debtors' motions for injunctive relief and sanctions. 10/5/99 Tr. at 21. The Debtors' bankruptcy cases were dismissed on October 13 for failure to submit required schedules with the voluntary petition.

Not content to have the bankruptcy proceedings over, on November 4 the Appellees filed motions for sanctions pursuant to Bankruptcy Rule 9011 (b. doc. # 24 in Harris case; b. doc. # 25 in Davis case) to which the Debtors responded (b. doc. # 30). The Court held a hearing on the sanctions motions on December 7, one transcript of which was provided to the Court to serve in both the Harris and Davis cases. As the Court has consolidated the cases, it will consider the transcript with respect to all of the Debtors.

At a hearing on December 7, after hearing argument from both sides, Judge Meyers concluded that the Debtors had misused the bankruptcy court by filing frivolous petitions that they never intended to pursue to their rightful conclusions. l2/7/00 Tr. at 15-16. He further found that the Debtors' bankruptcy filings were motivated by the desire to "ward off the Israelite Bible Class" with the automatic stay imposed by 11 U.S.C. § 362(a) and not by any intent to alleviate the consequences of any insolvency. 12/7/00 Tr. at 16. Using the inherent power of the bankruptcy court, Judge Meyers imposed sanctions jointly and severally upon the Debtors and Beard in the amount of $3,683.55, the Appellees' reasonable attorney's fees and costs. He based this amount on figures that appellee Kruger provided at the hearing, without objection from the Debtors, regarding the hours he worked, his hourly billing rate and his expenses. 12/7/00 Tr. at 16-17. At the hearing, the Debtors did not seek to introduce any evidence in support of their position.

Judge Meyers entered a written order on December 10. (b. doc. # 35 in Harris case; b. doc. # 34 in Davis case) However, in the written order, he based the sanctions award on different conduct of the Debtors and Beard than he had found objectionable in the December 7 hearing. In the December 10

order, Judge Meyers found that the Debtors' complaints for injunctive relief and motions for sanctions were improper because they caused unnecessary delay, needlessly increased the cost of litigation, did not have evidentiary support and were not warranted by existing law. In drawing this conclusion, he found that "at no time, did the Israelite Bible Class, Inc., Edward Bruce, Paul Henry, Mark Hunter, or Richard Kruger do any acts of a post-petition bankruptcy nature in violation of the Bankruptcy Code." Order ¶3. Judge Meyers also determined, deferring to prior state court orders, that the Debtors had no property interest in the real property on which they made their homes, Order ¶8, that their ejectment on September 21 terminated any rights they may have had in that real estate, Order ¶9, and that they had no homestead interest in that real estate, Order ¶10. In the written order, Judge Meyers stated that he was issuing sanctions pursuant to Bankruptcy Rule 9011 and under the court's inherent authority in the amount of $ 3,683.55 with additional amounts as a penalty if payments were late. The Debtors requested reconsideration of the sanctions order (b. doc. # 36 in Harris case; b. doc. # 35 in Davis case) to no avail.

The Debtors appealed the bankruptcy court's sanction order on December 20 (b. doc. # 44 in Harris case; b. doc. # 43 in Davis case). They assert seven errors by the bankruptcy court; they claim that the bankruptcy court erred by awarding sanctions:

- when the Appellees did not comply with Federal Rule of Civil Procedure 11 regarding notice of the intent to file such a motion;
- without holding an evidentiary hearing;
- without a finding of contempt;
- where there was no evidence that the two documents filed in each case on behalf of the Debtors were improper;
- and without any evidence of the reasonableness or necessity of attorney's fees.

The Debtors also ask the Court to determine whether the Appellees violated the provisions of the automatic

bankruptcy stay, 11 U.S.C. § 362(a),[7] and to determine whether the Debtors had any property interest in their homes at the time they filed their bankruptcy petitions.

This case is complicated by the discrepancy between Judge Meyers's oral and written sanctions orders. The Court construes the two distinct bases for the bankruptcy court's sanctions order, the one from the hearing and the other from the written order, as alternative justifications for the sanctions. Thus, the Court will affirm the order if the sanctions could be upheld for either reason.

IV. Analysis

A. Notice of Intent to File Motion for Sanctions

The Court finds that the bankruptcy court did not err in imposing sanctions based on the Debtors' filing of frivolous petitions even if the 21-day waiting period of Federal Rule of Civil Procedure 11 was not observed. The Debtors claim that the Appellees did not give proper notice of their intent to seek sanctions and that therefore the court's sanctions order was improper.

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[7]Section 362(a) provides, in pertinent part:

> Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of -
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> > (1) the commencement or continuation ... of a judicial . . . action or proceeding against the debtor that was ... commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the cause under this title;
> >
> > (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
> >
> > (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate....

As a preliminary matter, although the Debtors cite Federal Rule of Civil Procedure 11, Bankruptcy Rule 9011 provides the proper authority for filing a motion for sanctions in a bankruptcy court. A party seeking sanctions from a bankruptcy court based on an opposing party's filing of improper documents (other than an improper bankruptcy petition) must give the opposing party notice and an opportunity to withdraw the challenged documents before filing a motion for sanctions with the court. Fed. R. Bankr. P. 9011 (c)(1)(A). Bankruptcy Rule 9011 (c)(1)(A) provides that the motion for sanctions shall be served on the opposing party but that it cannot be filed with the court unless the opposing party fails to withdraw the challenged document within 21 days.

Judge Meyers did not violate any timing provisions when he imposed sanctions at the December 7 hearing. In that hearing, he clearly based his sanctions order on the Debtors' filing of frivolous petitions, and under Bankruptcy Rule 9011, the 21-day waiting period does not apply to improper bankruptcy petitions. Therefore, Judge Meyers drew no erroneous legal conclusion with respect to the timing issue. The Court finds that Judge Meyers did not err when he imposed sanctions based on the Debtors' frivolous bankruptcy petitions without observing the 21-day notice requirement of Bankruptcy Rule 9011.

Alternatively, the bankruptcy court's sanctions on December 7 were proper under the court's inherent authority. A bankruptcy court has inherent power to sanction misconduct of those appearing before it. *See In re Rimsat, Ltd*, 212 F.3d 1039, 1048-49 (7th Cir. 2000); *see* Appellants' Br. at 7. No 21-day notice is required so long as the sanctioned party has notice and a meaningful opportunity to be heard. *Id.* at 1046. The Debtors had such notice and opportunity to be heard in their responses to the Appellees' motions for sanctions and at the December 7 hearing. Therefore, alternatively, the Court finds that the bankruptcy court did err in awarding sanctions under its inherent authority where Rule 9011's timing requirements might not have been satisfied. Accordingly, the Court is justified in affirming the bankruptcy

court's decision to enter sanctions under its inherent authority based on the Debtors' frivolous bankruptcy petitions.

B. Absence of Evidentiary Hearing[8]

The bankruptcy court did not err by failing to hold an evidentiary hearing before imposing sanctions. The Debtors claim that sanctions were entered improperly because the bankruptcy court did not hold an evidentiary hearing. Specifically, they claim that at the December 7 hearing, Judge Meyers did not allow the admission of documentary evidence and testimony from three witnesses that the Debtors intended to call at the hearing, presumably to demonstrate that their challenged filings were proper. Therefore, the Debtors claim, there was not sufficient evidence to justify the sanctions order.

The Court notes that, although the Debtors complain that their evidence was not received at the December 7 hearing, the Debtors never offered any, testimonial or otherwise. Nor did they object to the bankruptcy court's failure to take evidence. Thus, because the Debtors did not object at the lower court level, they have waived the issue on appeal. *See Divane v. Krull Elec. Co. Inc.*, 194 F. 3d 845, 849 (7th Cir. 1999).

Even if the issue had not been waived on appeal, the Court would still find no fault with the bankruptcy court's December 7 decision in the absence of a separate evidentiary hearing. Evidence need not be taken where the record is sufficient to support a sanctions award. In re *Memorial Estates, Inc.*, 132 B.R. 19, 22 (N.D. Ill. 1991). The Court has reviewed the transcript of the December 7 hearing and notes that there was sufficient evidence in the record to justify imposing sanctions without additional evidence. For example, at the hearing Beard admitted that the Debtors never filed any bankruptcy

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[8]The Debtors' second and fourth charged errors raise identical issues and are considered together in this section.

schedules in the case and never filed for an extension of time to do so. 12/7/99 Tr. at 9-10. Judge Meyers determined that Beard was not credible when he represented to the bankruptcy court that he, on behalf of the Debtors, intended to proceed with the bankruptcy case. 12/7/99 Tr. at 10. In fact, the Debtors' briefs to this Court confirm that the automatic stay, not relief from the consequences of insolvency, was the Debtors' motivation for filing their bankruptcy petitions. They stated, "Appellant[s] filed the petition as an emergency action to save [their] home[s], and as protection against an outstanding claim against [them]." Appellants' Br. at 4. Nowhere in the record on appeal have the Debtors represented that they are insolvent. Therefore, the Court cannot say that Judge Meyers erred in his factual findings, legal conclusions or exercise of discretion in imposing sanctions for frivolous bankruptcy petitions. Accordingly, the Court would be justified in affirming the bankruptcy court's decision despite the lack of a separate evidentiary hearing.

It is worth noting that the evidence the Debtors claim to have goes to events that appear to have been litigated in state court and resulted in an order of ejectment. A bankruptcy court is not a proper forum to collaterally attack a state court judgment entered with proper jurisdiction.

Furthermore, the Debtors' claim that "[t]he facts underlying this case are obviously extensive and complicated as there has been some kind of litigation for nearly twenty years." Appellants' Br. at 9. They are wrong. The facts underlying this case are fairly recent and involve only the proceedings in the bankruptcy court. The only issue for the bankruptcy court to decide in this case was, the only issue on appeal is, and the only issue if and when this Court's decision is appealed will be, whether the Debtors' filings warranted sanctions, not the merits of Illinois state court judgments or any other judgments entered over the past twenty years.

C. <u>Absence of Finding of Contempt</u>

Judge Meyers did not need to find the Debtors in contempt before sanctioning them for filing frivolous bankruptcy petitions pursuant to Bankruptcy Rule 9011 or pursuant to the bankruptcy court's inherent authority. The Debtors claim that a finding of contempt would have given them notice and an opportunity to present evidence in opposition to the finding. The Debtors have presented no case law indicating that a court must make a finding of contempt before exercising its power to sanction those appearing before it. They have also failed to explain how a finding of contempt would have allowed them to present additional evidence that they could not have presented in their response to the Appellees' motion for sanctions or at the December 7 hearing. The Court finds that Judge Meyers did not err in sanctioning the Debtors without a finding of contempt.

D. Absence of Showing of Reasonableness or Necessity of Fee Award

The Court finds that Judge Meyers did not err in the amount of sanctions imposed. The Debtors claim that sanctions were entered improperly because there was no evidence of the rates charged by the Appellees' attorney, hours worked or an itemized bill to justify the sanctions amount. The Appellees claim that the statement of attorney's fees given at the December 7 hearing was sufficient.

The Court notes that appellee Kruger, the Appellees' attorney, reported to Judge Meyers at the December 7 hearing that he had worked 29.8 hours defending the bankruptcy case and charged an hourly rate of $110. The Debtors did not object to this accounting. 12/7/99 Tr. at 16-17. Thus, once again, because the Debtors did not object at the lower court level, they have waived the issue on appeal. *See Divane v. Krull Elec. Co.*, 194 F.3d 845, 849 (7th Cir. 1999).

Even if they had not waived the issue, the Court finds that Judge Meyers did not err in his factual findings, legal conclusions or exercise of discretion in awarding sanctions based on the information presented at the December 7 hearing. Accordingly, the Court would be justified in affirming the bankruptcy

court's decision.

E. Property Interest and Automatic Stay

The Court declines to address the issues of the Debtors' alleged property interest in the subject real estate and of the Appellees' alleged violation of the automatic stay of 11 U.S.C. § 362(a). Any error in the bankruptcy court's findings with respect to these issues (and the Court does not make any decision on whether there was error) would be harmless in the instant appeal in light of the fact that the sanctions order at issue would be justified on alternate grounds. That is, since Judge Meyers properly imposed sanctions based on the Debtors' filing of frivolous bankruptcy petitions, the sanctions order should not be invalidated by any erroneous or improper findings that might have been included in his December 10 written order.

For the foregoing reasons the Court AFFIRMS the bankruptcy court's decision to sanctions.

V. Conclusion

The Court hereby **ORDERS** that case number 00-cv-40l4-JPG and case number 00-cv-4015-JPG be **CONSOLIDATED**. All future filings shall bear the foregoing caption reflecting the consolidation.

For the foregoing reasons, the Court AFFIRMS the bankruptcy court's decision to award sanctions and **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.

DATED: September 26, 2000

/s/ J. PHIL GILBERT
CHIEF JUDGE